



November 2, 2023

The Honorable [Name]
United States [Senate/House of Representatives]
Washington, DC

Subject: Congressional Kids Online Safety Act Comments

Dear {Senator/Representative}:

We write to express our opposition to S. 1409, the Kids Online Safety Act (KOSA), in its current form. As organizations that [advocate for access to technology and technology policies that benefit the LGBTQ+ community], we fully support initiatives that seek to protect minors from malicious actors and dangerous online content. However, we believe that KOSA as currently drafted—including recent changes purportedly intended to address LGBTQ+ concerns—would inadvertently deprive the more than 5.7 million young LGBTQ+ people in this country of important and informative digital content and further block access to supportive, life-affirming online communities. In particular, we believe KOSA poses unique hazards to youth who are LGBTQ+ or have LGBTQ+ family, who could be deprived of enriching online experiences that can help them navigate a difficult period in their young lives in environments that are too often hostile to their dignity and well-being. The population of LGBTQ+ youth (ages 13-17) in the United States alone would outnumber 29 of the 50 states (5,730,989) and is nearly exactly twice as large as the number of federal employees in the United States (2,869,400). LGBTQ+ youth make up a massive demographic of the U.S. population, and one we cannot afford to hurt with harmful legislative provisions.

Specifically, KOSA imposes a “duty of care” obligation on online platforms that would likely (however inadvertently) incentivize online services to remove otherwise legitimate content, at the expense of free expression and privacy, in order to avoid violating KOSA’s prohibitions and consequential legal penalties. This risk could be particularly acute in states in which attorneys general seek to aggressively censor positive, enriching content that they politically deem to be offensive or harmful to minors. This is not a theoretical or abstract danger. Many states have already passed laws or enacted policies that are hostile to the LGBTQ+ community, and we are deeply concerned that KOSA would simply provide these political actors with another tool to carry out their anti-LGBTQ+ political agenda. Indeed, Senator Blackburn (R-TN), the lead co-author of the bill, specifically and publicly cited the importance of “protecting minor children from the transgender in this culture” and highlighted KOSA as a means to shield youth from “being indoctrinated” by social media platforms. The damage of this would be widespread- in Senator Blackburn’s own state, there are more LGBTQ+ high schoolers (119,245) than there are



high school athletes (91,200).

In order to avoid such pitfalls, we believe that KOSA should be amended to respect the global consensus on protecting fundamental rights online by explicitly prohibiting any kind of “general monitoring” legal obligation. We believe that such a provision would appropriately foster free expression and protect against censorship of legitimate content, while preserving the bill’s intent of mitigating harms to minors. We also believe that such a clarification would better protect user privacy and security by limiting the need for constant online surveillance.

We are also open to additional conversations to mitigate unintended consequences from the overly broad reach of the duty of care. While we appreciate the effort to narrow KOSA’s duty of care provision when it was reintroduced in the 118th Congress and during the Senate Commerce Committee’s Executive Session in July 2023, the changes do not address our organizations’ concerns. Specifically, the text now explicitly states that KOSA shall not be construed to “prevent or preclude... any minor from deliberately and independently searching for, or specifically requesting content...” This language is a welcomed statutory clarification, but it only addresses the “demand side,” not the “supply side” of the online ecosystem. Furthermore, a platform would have no ability to predict a user’s state of mind in order to know whether their search is “deliberate.” Even if this new language was effective in no longer encumbering users in their search for digital content, they may not be able to actually find that content, because it will not exist.

That’s because political actors hostile to LGBTQ+ issues could still wield the KOSA sword to bring enforcement actions against online platforms for surfacing content they subjectively deem harmful to minors. The addition of this limitation does not change the fact that platforms would still face substantial legal liability when a user encounters a particular piece of content that could be deemed harmful, leaving platforms with no choice but to remove the content completely. In other words, this ongoing exposure to considerable legal risk would incentivize platforms to over-filter and remove otherwise legitimate online content.

Thank you for your attention to our organizations’ concerns over KOSA. We stand ready to work with you and the cosponsors of the bill in order to protect young people from toxic digital content and harmful online practices, while concomitantly preserving their rights to seek important information and connect with supportive online communities. We believe that protecting these basic, fundamental rights is crucial to protecting the dignity and well-being of not only LGBTQ+ youth, but all marginalized communities in our society.

Sincerely,

LGBT Tech
All Rainbow and Allied Youth, Inc. (ARAY)
American Atheists



American Civil Liberties Union (ACLU)
Atlanta Pride Committee
Bellingham Queer Collective (BQC)
Caribbean Equality Project (CEP)
CenterLink: The Community of LGBTQ Centers
Centre LGBT+
Charlotte Trans Health
Colors+
Compass LGBTQ Community Center
Equality Nevada
Four Corners Rainbow Youth Center
GenderNexus
Grand Rapids Pride Center
Great Lakes Bay Pride
Guilford Green Foundation & LGBTQ Center (GGF)
Henderson Equality Center
Hugh Lane Wellness Foundation
Indiana Youth Group (IYG)
Institute for LGBT Health and Wellbeing
Lancaster LGBTQ+ Coalition
LGBT Center of Raleigh
LGBT Center of SE Wisconsin
LGBT Community Center of Greater Cleveland
LGBTQ Center OC
Muncie OUTreach LGBTQ+ Center
National LGBTQ Task Force Action Fund
North Las Vegas Equality Center
North Shore Alliance of GLBTQ+ Youth (NAGLY)
NoVA Prism Center
one-n-ten
Openhouse
Our Family Coalition
Out Boulder County
Out of the Box LGBTQ Center
OutCenter Southwest Michigan
OutReach LGBTQ+ Community Center
Outright Vermont
Pizza Klatch
Pride Center of Terre Haute Inc.
Pride Center San Antonio
Pride Community Center of the Tricities
Pridelines, Miami LGBTQ Center



PRISM FL, Inc
Prism United
Queermunity Collaborative
Rainbow Connections ATX, a program of Family Eldercare
Rainbow Rose Center
RETY
Sacramento LGBT Community Center
Sam & Devorah Foundation for Trans Youth
Seacoast Outright
Shelly's Voice Advocacy
Shoals Diversity Center
St. Louis Queer+ Support Helpline
Stonewall Alliance of Chico
The Center for Sexuality & Gender Diversity
The Equality Crew
The LGBTQ Community Center of the Desert
The LGBTQ+ Center of Southern Nevada
The LIAM Foundation
the Montrose Center
The Pride Center at Equality Park
The Source LGBT+ Center
Transgender Resource Center of New Mexico
TransSOCIAL, Inc.
Triangle Community Center
Uptown Gay and Lesbian Alliance (UGLA)
We Are Family
William Way LGBT Community Center
Youth Oasis
Youth OUTright WNC